APPEAL NO. 040734
FILED MAY 26, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing (CCH) was held on March 10, 2004. The hearing officer decided that the respondent's (claimant herein) compensable injury of _____, extends to include depression. The appellant (carrier herein) files a request for review, arguing that this determination is contrary to the evidence and that the hearing officer did not address the issue of the effect of an earlier benefit review conference (BRC) agreement signed by the claimant. There is no response from the claimant to the carrier's request for review in the appeal file.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

We have held that the question of the extent of an injury is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701, 702 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Pool v. Ford Motor Co., 715 S.W.2d 629, 635 (Tex. 1986).

In the present case, there was simply conflicting evidence, and it was the province of the hearing officer to resolve these conflicts. Applying the above standard of review, we find that the hearing officer's decision regarding the extent of the claimant's injury was sufficiently supported by the evidence in the record.

The carrier argues that the hearing officer failed to address its argument that the earlier BRC agreement precluded the claimant from claiming that his injury extended to depression. We do not believe this to be the case, if one looks at the hearing officer's decision and how the case was tried at the CCH.

The carrier and the claimant entered into a BRC agreement dated September 19, 2002, in which the parties entered into agreement on the then disputed issues of maximum medical improvement, impairment rating, and extent of injury. In regard to extent of injury the agreement stated as follows:

> The parties agree that the compensable injury includes the claimant's cervical and lumbar spine, but no other body parts.

The carrier argued at the CCH that this previous BRC agreement precluded the claimant from claiming depression is now part of his injury. The claimant argued on the other hand that his depression was a component of his cervical and lumbar spine injury. The hearing officer ruled favorably to the claimant based upon the claimant's theory of the case, making the following finding of fact:

> Claimant suffers from depression secondary to chronic pain syndrome related to his _____ cervical spinal injury, as evidenced by Claimant's testimony and a February 25, 2004 record from [Dr. W].

In his decision the hearing officer quotes the following language from Dr. W's letter of February 25, 2004:

> [Claimant] is currently under treatment in this office for on the job injuries sustained on _____ [sic] . . . . [Claimant] has not recjuperated fully from his injuries and he continues to experience severe pain and rigidity in his cervical spine as a result of this accident. [Claimant] has shown minimal improvement since the cervical surgery. There is diagnostic evidence for failed cervical spinal fusion. [Claimant] has also experienced some depression since the injury. He suffers from depression secondary to chronic pain syndrome related to his cervical spinal injury. [Claimant] needs further evaluation and treatment for his depression so he may function and perform his activities of daily living. In summary, it is medically reasonable that [claimant's] depression is a result of his on the job injuries sustained on _____.

Thus, in light of the way the issue was framed and in which the case was tried, the hearing officer provided a clear rationale for his rejection of the carrier's argument regarding the BRC agreement. He obviously accepted the claimant's theory that his depression was a component of his cervical injury, made a finding of fact to that effect, and cited the evidence upon which he based his factual finding. We perceive no error.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **TEXAS PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION for Fremont indemnity Company, an impaired carrier** and the name and address of its registered agent for service of process is

MARVIN KELLY, EXECUTIVE DIRECTOR
9120 BURNET ROAD
AUSTIN, TEXAS 78758.

_____
Gary L. Kilgore
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Margaret L. Turner
Appeals Judge